

HOUSE BILL 2648

By Odom

AN ACT to amend Tennessee Code Annotated, Title 30, Chapter 3; Title 33; Title 34 and Title 71, relative to conservatorships.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 34-1-107(a), is amended by adding the following as a new subdivision:

(4) A guardian ad litem shall not be appointed for any respondent to a petition for appointment of a conservator, if such respondent is sixty (60) years of age or older.

SECTION 2. Tennessee Code Annotated, Section 34-1-108, is amended by deleting subsections (a) and (b) and substituting the following:

(a)

(1) Except as provided in subsection (b), the hearing on a petition for appointment of a guardian shall be held not less than seven (7) nor more than sixty (60) days from the date of service on the respondent or the date the guardian ad litem was appointed, whichever is later.

(2) The hearing on a petition for appointment of a conservator shall be held not less than thirty (30) nor more than sixty (60) days from the date of service on the respondent.

(3) The hearing date may be extended on motion showing good cause.

(b) If the petition alleges the minor is faced with a life threatening situation, the court may schedule the hearing in less than seven (7) days from the date of service on the respondent; provided, that actual notice of the hearing is given to the closest relative and the respondent. There shall be no emergency conservatorships awarded in this state.

SECTION 3. Tennessee Code Annotated, Section 34-1-108, is further amended by adding the following as a new subdivision to subsection (c):

(3) The notice shall also contain on the reverse side or on an attached sheet a statement that alerts the respondent that the respondent may lose all rights, liberties, property, and freedom if the conservatorship is granted.

SECTION 4. Tennessee Code Annotated, Section 34-1-108, is further amended by adding the following as a new subsection (d):

(d) A hearing on a petition for appointment of a conservator shall not be held ex parte, unless three (3) physicians licensed under title 63, chapter 6 or 9, provide sworn affidavits stating that it would be severely detrimental to the respondent's physical health to attend the hearing.

SECTION 5. Tennessee Code Annotated, Section 34-1-114(a), is amended by deleting the word "shall" in the first sentence and substituting instead the language "may, in the court's discretion,".

SECTION 6. Tennessee Code Annotated, Section 34-1-126, is amended by designating the existing language as subsection (a) and adding the following as a new subsection:

(b) In making its findings, the court shall consider medical evidence, as required by § 34-3-105.

SECTION 7. Tennessee Code Annotated, Section 34-3-108, is amended deleting all of the language in subsections (c) and (d) and substituting the following:

(c)

(1) The court, upon receipt of the petition filed under this section, shall conduct a hearing on an emergency basis. In no event shall the hearing be held more than seven (7) days from the date of service on the conservator.

(2) At the hearing, the disabled person has all the rights set out in § 34-3-106.

(d)

(1) Upon conclusion of the hearing, if the petitioner has proved by a preponderance of the evidence that the disabled person is not in need of assistance, the court shall enter an order setting forth the court's findings of fact and shall remove the conservator and dissolve the original order. No medical proof shall be required to terminate a conservatorship, but, if provided, the court shall consider any medical proof presented.

(2) Upon conclusion of the hearing, if the petitioner has not proved by a preponderance of the evidence that the disabled person is not in need of assistance, the court shall enter an order setting forth the court's findings of fact and may do any of the following:

(A) Dismiss the petition;

(B) Remove the conservator and appoint a successor;

(C) Modify the original order; or

(D) Grant any other relief the court considers appropriate and in the best interest of the disabled person.

SECTION 8. Tennessee Code Annotated, Title 34, Chapter 3, Part 1, is amended by adding the following as a new section:

34-3-1\_\_.

(a) The respondent to a petition for appointment of a conservator shall retain access to the respondent's property until the need for a conservatorship is established as required by § 34-1-126.

(b) The respondent to a petition for appointment of a conservator shall be permitted to retain an attorney of the respondent's choosing.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.